

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

INDIANAPOLIS

OFFICE MEMORANDUM

Date: February 1, 2002

To: Water Pollution Control Board Members

From: Tim Method
Deputy Commissioner

Subject: Preliminary Adoption Hearing for Wetland Draft Rules

As IDEM indicated at the December 2001 meeting of the Water Pollution Control Board, the rulemaking concerning Wetland Water Quality Standards and 401 Water Quality Certification or State Surface Water Modification Permit (SWMP) is scheduled for public hearing and consideration of preliminary adoption at the Board's meeting on February 13, 2002. The following materials are being made available in advance of the public hearing for this rulemaking:

1. Fact Sheet.
2. Response to comments from the original second comment period of December 1, 1999 to February 14, 2000 and the additional second comment period of October 1, 2001 to October 30, 2001.
3. Draft rule, 327 IAC 2-1.8 and draft article, 327 IAC 17.
4. A marked-up copy of the draft rules showing changes that have been made since the draft rules were brought before the June and July 2000 WPCB meetings for consideration of preliminary adoption.

Since IDEM's presentation of a previous version of these rules to the Water Pollution Control Board in June 2000, extensive discussions have been held in various forums related to this rulemaking, including the following:

- The Environmental Quality Service Council (EQSC), in late 2000, made several recommendations relative to the rules. Many of the recommendations have been incorporated into the current version of the draft rules.
- The U.S. Supreme Court, in January 2001, ruled to restrict federal jurisdiction for certain isolated waters.
- IDEM formed a focused workgroup to discuss ways to modify the ongoing rulemaking through addressing issues raised by the U.S. Supreme Court ruling. This workgroup has met four times since the summer of 2001, and many changes have been made to the draft rules based on comments and input from this workgroup.

- IDEM published an additional second notice of comment period containing revised draft rules in the October 2001 Indiana Register opening a 30-day public comment period.
- A group of industrial and other organizations have petitioned the Board to conduct a separate rulemaking on an alternative proposal concerning matters covered by this rulemaking. The Board has scheduled two public hearings to be held in March 2002 on this alternative.
- The 2002 General Assembly has considered three different bills with impacts on the ongoing rulemaking. HB 1306 and SB 141 now contain provisions that will require further EQSC study of issues associated with this rulemaking. HB 1306 would preclude the Board or IDEM from finally adopting, amending, or enforcing any administrative rule concerning wetlands passed after January 2002 until the earlier of either the completion of the EQSC's study (required by December 2002) or May 2003. Neither HB 1306 nor SB 141 has any language that would prohibit the Board from preliminary adopting the draft rules.

Based on the above-mentioned activities, the draft rules prepared for consideration of preliminary adoption by the Board at the February 2002 meeting contain many changes made to address concerns raised at and since the June 2000 board meeting.

IDEM respects the positions of all stakeholders on these rules and will work closely with the EQSC if it addresses wetlands related issues later this year. IDEM will also work closely with the General Assembly and, of course, abide by any new statutory provision. In the meantime, IDEM believes that the draft rules are ready to proceed to preliminary adoption. We are committed to continuing work with all interested persons to further refine the rules prior to final adoption.